

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
SOUTH SHORE COMMUNITY SERVICES LLC)
For Approval to Transfer its)
Utility Operations, Assets, and)
Certificate of Public Convenience)
and Necessity, to Kukui'Ula South)
Shore LLC.)

DOCKET NO. 03-0144

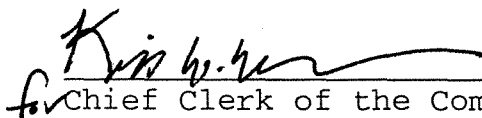
DECISION AND ORDER NO. 20676

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Docket No. 03-0144
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DECISION AND ORDER

I.

Introduction

A.

SOUTH SHORE COMMUNITY SERVICES LLC ("SSCS") requests the commission's approval to transfer its utility operations, assets, and certificate of public convenience and necessity ("CPCN").¹ SSCS makes its request pursuant to Hawaii Revised Statutes ("HRS") §§ 269-7.5 and 269-19.

SSCS served copies of its application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). SSCS responded to the Consumer Advocate's information requests on September 30, 2003.

¹SSCS' application, filed on May 16, 2003.

The Consumer Advocate does not object to the commission's approval of SSCS' application, subject to certain conditions.²

B.

SSCS' application describes an array of Hawaii and Arizona entities, their respective inter-relationships, and the joint venture and four-step transaction proposed by these entities ("proposed transaction"). SSCS attaches certain organizational charts to its application to assist in describing the proposed transaction.³ The commission refers to these organizational charts throughout its decision and order.

II.

Hawaii Entities

A.

Kukui'ula Development Company, Inc.

Kukui'ula Development Company, Inc., a Hawaii corporation, is the former owner and developer of a 1,045-acre master planned community in Kukui'Ula, Kauai (aka the Kukui'Ula Project). Kukui'ula Development Company, Inc. is a wholly-owned

²Consumer Advocate's position statement, filed on November 5, 2003.

³Specifically: (1) Exhibit A, organizational chart of Alexander & Baldwin, Inc.; (2) Exhibit G, transfer of utility assets and liabilities; and (3) Exhibit H, proposed ownership structure. These three exhibits are attached to the decision and order.

subsidiary of Alexander & Baldwin, Inc., a Hawaii corporation.
(See SSCS' Exhibits A, G, and H, attached.)

B.

South Shore Community Services LLC

SSCS is a public utility authorized to provide sewage treatment service to: (1) the Kukui'Ula Project; and (2) the County of Kauai for the residents of a low-income housing development in Paanau, Kauai (aka the County's Paanau Project).⁴ SSCS' sole member is Kukui'ula Development Company, Inc. (See SSCS' Exhibits A and G, attached.) Presently, SSCS has a customer base of: (1) 15 meters at the Koloa Estates Project, a residential development situated within the Kukui'Ula Project; and (2) one meter at the County's Paanau Project.

Kukui'ula Development Company, Inc.'s personnel manages SSCS, and an independent contractor, Aqua Engineers, Inc., operates SSCS' sewage treatment plant. SSCS has no employees.

C.

Alexander & Baldwin, Inc.'s Subsidiaries

SSCS' Exhibit A identifies Alexander & Baldwin, Inc.'s subsidiaries, including: (1) A&B Properties, Inc. (direct subsidiary); (2) Kukui'ula Development Company, Inc. (direct

⁴See Docket No. 99-0031, *South Shore Comm. Serv. LLC*, Decision and Order No. 17822, filed on July 11, 2000; and Order No. 17975, filed on August 24, 2000.

subsidiary); (3) McBryde Sugar Company, Limited (direct subsidiary) (collectively, "A&B's direct subsidiaries"); and (4) SSCS (indirect subsidiary through Kukui'ula Development Company, Inc.). (See SSCS' Exhibits A and H, attached.)

D.

Kukui'Ula Development Company (Hawaii), LLC

Kukui'Ula Development Company (Hawaii), LLC, a Hawaii limited liability company, is the present owner and developer of the Kukui'Ula Project. Kukui'Ula Development Company (Hawaii), LLC's members are: (1) KDC, LLC, a Hawaii limited liability company; and (2) DMB Kukui'Ula LLC, an Arizona entity described in Section III, below.

E.

KDC, LLC

KDC, LLC is managed by A&B Properties, Inc. (See SSCS' Exhibit H, attached.) KDC, LLC's members are A&B's direct subsidiaries. (See SSCS' Exhibit H, attached.)

III.

Arizona Entities

DMB Kukui'Ula LLC is an Arizona limited liability company formed for the purpose of being the managing member of Kukui'Ula Development Company (Hawaii), LLC. (KDC, LLC is the

other member of Kukui'Ula Development Company (Hawaii), LLC.)
(See SSCS' Exhibits G and H, attached.)

DMB Kukui'Ula LLC's sole member is DMB Realco II LLC, an Arizona limited liability company. DMB Realco II LLC,'s sole member, in turn, is DMB Realco LLC. (See SSCS' Exhibits G and H, attached.)

DMB Realco LLC's members are: (1) the Dorrance Trust, majority member, 73-1/3 per cent interest; (2) the Brown Family Trust, minority member, 13-1/3 per cent interest; and (3) the Mark N. Sklar Trust, minority member, 13-1/3 per cent interest (collectively, "trusts"). (See SSCS' Exhibits G and H, attached.)

DMB Associates, Inc., an Arizona corporation, is the non-member manager of DMB Realco LLC. (See SSCS' Exhibits G and H, attached.) The officers and directors of DMB Associates, Inc. are the settlors and/or trustees of the trusts.

IV.

A.

Kukui'Ula Project's Former and Current Developers

Until March 31, 2003, Kukui'ula Development Company, Inc. was the owner and developer of the Kukui'Ula Project. As of March 31, 2003, Kukui'Ula Development Company (Hawaii), LLC is the Project's present owner and developer. KDC, LLC and DMB Kukui'Ula LLC formed Kukui'Ula Development Company (Hawaii), LLC for the purpose of jointly developing the Kukui'Ula Project.

B.

Joint Venture Agreement

By a contribution agreement dated April 25, 2002 (aka the joint venture agreement):

1. SSCS and the A&B direct subsidiaries will contribute to Kukui'Ula Development Company (Hawaii), LLC, through KDC, LLC, real property and other project-related assets, in exchange for a fifty (50) per cent ownership interest in Kukui'Ula Development Company (Hawaii), LLC.

The project-related assets being transferred include SSCS' sewage treatment plant and its related infrastructure. SSCS' commission-issued CPCN is also being transferred.

2. DMB Kukui'Ula LLC will contribute cash to Kukui'Ula Development Company (Hawaii), LLC, in exchange for a fifty (50) per cent ownership interest.

C.

Four-Step Transaction

SSCS further explains that, upon the commission's approval of its application:

1. Kukui'Ula Development Company (Hawaii), LLC will form Kukui'Ula South Shore LLC, the new utility and provider of sewage treatment service for the Kukui'Ula Project.

Kukui'Ula Development Company (Hawaii), LLC will become the manager and sole member of Kukui'Ula South Shore LLC. (See SSCS' Exhibits G and H, attached.)

2. Through a four-step transaction, SSCS' utility operations and other project-related assets will be transferred to Kukui'Ula South Shore LLC.⁵

SSCS explains that the subject transaction effectively involves the transfer of SSCS' utility operations and other project-related assets, for the purpose of allowing KDC, LLC and DMB Kukui'Ula LLC to jointly develop the Kukui'Ula Project through Kukui'Ula Development Company (Hawaii), LLC. Ultimately, Kukui'Ula Development Company (Hawaii), LLC will be the manager and sole member of Kukui'Ula South Shore LLC, the new utility. In turn, KDC, LLC and DMB Kukui'Ula LLC will each own fifty (50) per cent interests in Kukui'Ula Development Company (Hawaii), LLC. (See SSCS' Exhibit H, attached.)

Kukui'Ula Development Company (Hawaii), LLC will be directly responsible for providing the necessary financial support for Kukui'Ula South Shore LLC to operate the sewage treatment plant.

⁵Specifically:

Step 1. SSCS' merger into Kukui'ula Development Company, Inc.

Step 2. Kukui'ula Development Company, Inc.'s transfer of SSCS' utility operations and other project-related assets to KDC, LLC.

Step 3. KDC, LLC's transfer of the same to Kukui'Ula Development Company (Hawaii), LLC.

Step 4. Kukui'Ula Development Company (Hawaii), LLC's transfer of the same to Kukui'Ula South Shore LLC.

See SSCS' Exhibit G, attached.

V.

South Shore Community Services LLC's Position

A.

HRS § 269-19 provides that no public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, "without first having secured from the public utilities commission an order authorizing it so to do."

B.

SSCS seeks the commission's approval to transfer its utility operations, assets, and CPCN to Kukui'Ula South Shore LLC.⁶ In support thereto, SSCS states:

1. The transfer is part of an overall reorganization to jointly develop the Kukui'Ula Project by KDC, LLC and DMB Kukui'Ula LLC, through Kukui'Ula Development Company (Hawaii), LLC.

In exchange for receiving an interest in the Kukui'Ula Project, DMB Kukui'Ula LLC will: (A) assume a management role in the Project's development; and (B) have primary responsibility for providing the Project's future financing.

2. KDC, LLC and DMB Kukui'Ula LLC "intend to maintain for the foreseeable future the current utility operations and policies."

⁶Throughout its application, SSCS alternately requests that the commission transfer its CPCN, or reissue its CPCN in the name of Kukui'Ula South Shore LLC. The commission will treat SSCS' request as one to transfer its CPCN.

3. KDC, LLC and DMB Kukui'Ula LLC will have the "resources, financial and managerial support, ability, and dedication to ensure the continued highest level of service" to the utility's current and future customers.
4. Kukui'Ula South Shore LLC will continue to have access to the financial and managerial resources that SSCS LLC has available to it from Alexander & Baldwin, Inc.
5. The transfer will have no material effect on SSCS LLC's ratepayers or operations. No significant operational changes are anticipated. Aqua Engineers, Inc. will continue to operate the sewage treatment plant, without change. In addition, the transfer will not affect the current sewage treatment rates.

Upon the commission's approval of the transfer, SSCS "will provide the Commission with notice of the effective date of the proposed transfer within one month of the Commission's decision."

VI.

Consumer Advocate's Position

The Consumer Advocate examined: (1) the terms and conditions of the asset transfer; (2) Kukui'Ula South Shore LLC's fitness, willingness, and ability to provide the sewage treatment service currently performed by SSCS; and (3) whether the proposed transfer is in the ratepayers' best interests.

The Consumer Advocate finds that:

1. The proposed transfer of SSCS' utility assets, as described in the application, is necessary and reasonable.
2. SSCS' sewage treatment plant assets, which "currently have a book value of \$0 because the assets were

completely written-off at the end of 1999[,] " are not reflected in its rate base for ratemaking purposes.

3. Based on SSCS' operating losses for the years 2001 and 2002, it appears that Kukui'Ula South Shore LLC "will continue to require financial support to sustain the wastewater operations." The Consumer Advocate's review of Alexander & Baldwin, Inc.'s and the DMB entities' financial statements reveals that Kukui'Ula South Shore LLC "will be able to receive financial support, if needed, to sustain the proposed wastewater service." Kukui'Ula Development Company (Hawaii), LLC's members "recognize that the financial support to sustain the continued operation of the wastewater facilities is essential to the development of the Kukui'Ula Project."

4. SSCS' sewage treatment plant has a capacity of 1.2 million gallons per day and currently receives an average daily flow of approximately 20,000 gallons per day. There is no evidence of any deficiencies associated with the plant. Upon the transfer of the plant to Kukui'Ula South Shore LLC, the Consumer Advocate "assumes that Kukui'Ula South Shore [LLC] will have sufficient capacity and facilities needed to provide the wastewater service to the existing and future customers in the existing service territory."

5. Kukui'Ula Development Company (Hawaii), LLC, through Aqua Engineers, Inc., will possess the technical expertise needed to operate the sewage treatment plant within the commission's and State of Hawaii, Department of Health's, prescribed requirements.

6. The proposed transfer will not materially affect SSCS' ratepayers, operations, or sewer rates. Also, SSCS does not anticipate any changes to customer service or billing/payment procedures. The proposed transfer "is in the ratepayers' best interest."

In conclusion, the Consumer Advocate does not object to the commission's approval of SSCS' application, subject to certain conditions:

1. SSCS informs the commission and Consumer Advocate of the closing of the proposed transaction within five (5) business days after the closing date.

2. SSCS' successor-in-interest provides the commission and Consumer Advocate a copy of "any customer notification regarding the new utility company name and any other resulting changes."

3. SSCS revises its former tariff "to reflect the new company name, customer contact, and any other resulting changes."

4. SSCS' successor-in-interest is subject to the commission's annual financial reporting requirements governing wastewater utilities.

VII.

Discussion

The commission examines two issues in its review of SSCS' request: (1) whether Kukui'Ula South Shore LLC meets the applicable requirements for a CPCN, pursuant to HRS § 269-7.5(b); and if so (2) whether the transfer of SSCS' utility operations,

assets, and CPCN, is reasonable and consistent with the public interest, in accordance with HRS § 269-19.

A.

The commission finds that, pursuant to HRS § 269-7.5(b):

1. Kukui'Ula South Shore LLC is fit, willing, and able to properly perform the sewer treatment services presently performed by SSCS.

2. Kukui'Ula South Shore LLC is able to conform to the applicable terms, conditions, and rules adopted by the commission.

3. The sewer treatment service "is, or will be, required by the present or future public convenience and necessity[.]"

B.

The commission also finds that the transfer of SSCS' utility operations, assets, and CPCN to Kukui'Ula South Shore LLC, is reasonable and consistent with the public interest. Since the 1990s, Kukui'ula Development Company, Inc. has attempted to develop the Kukui'Ula Project. The Kukui'Ula Development Company (Hawaii), LLC joint venture and related transactions thereto represents an infusion of capital by the Arizona entities for the purpose of "jump starting" the Kukui'Ula Project.

The commission: (1) adopts as reasonable the Consumer Advocate's proposed conditions; and (2) approves the proposed transfer, consistent with HRS § 269-19.

VIII.

Orders

THE COMMISSION ORDERS:

1. Kukui'Ula South Shore LLC meets the requirements for a certificate of public convenience and necessity, pursuant to HRS § 269-7.5(b).

2. South Shore Community Services LLC's request to transfer its utility operations, assets, and certificate of public convenience and necessity, to Kukui'Ula South Shore LLC, as described in the application, is approved, pursuant to HRS § 269-19.

3. Within thirty (30) days of this decision and order, Kukui'Ula South Shore LLC shall: (A) pay a public utility fee of \$60, pursuant to HRS § 269-30; and (B) file its tariff, under its own name, pursuant to HRS § 269-16.

4. Upon closing, Kukui'Ula South Shore LLC shall promptly: (A) notify the commission and Consumer Advocate; and (B) provide its customers with written notice of the name and any other related changes, with copies served upon the commission and Consumer Advocate.

5. Kukui'Ula South Shore LLC shall file with the commission, with service upon the Consumer Advocate, an annual financial report in accordance with the *Uniform Systems of*

Accounts - 1996 of the National Association of Regulatory Utility Commissioners covering its sewer treatment service commencing with the calendar year ending December 31, 2003, and each year thereafter. The reports shall be filed not later than March 31 of each year, for the immediate past calendar year.

6. Kukui'Ula South Shore LLC shall conform to all of the commission's orders set forth above. Its failure to adhere to the commission's orders shall constitute cause for the commission to void this decision and order, and may result in further regulatory actions as authorized by law.

DONE at Honolulu, Hawaii this 25th day of November, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

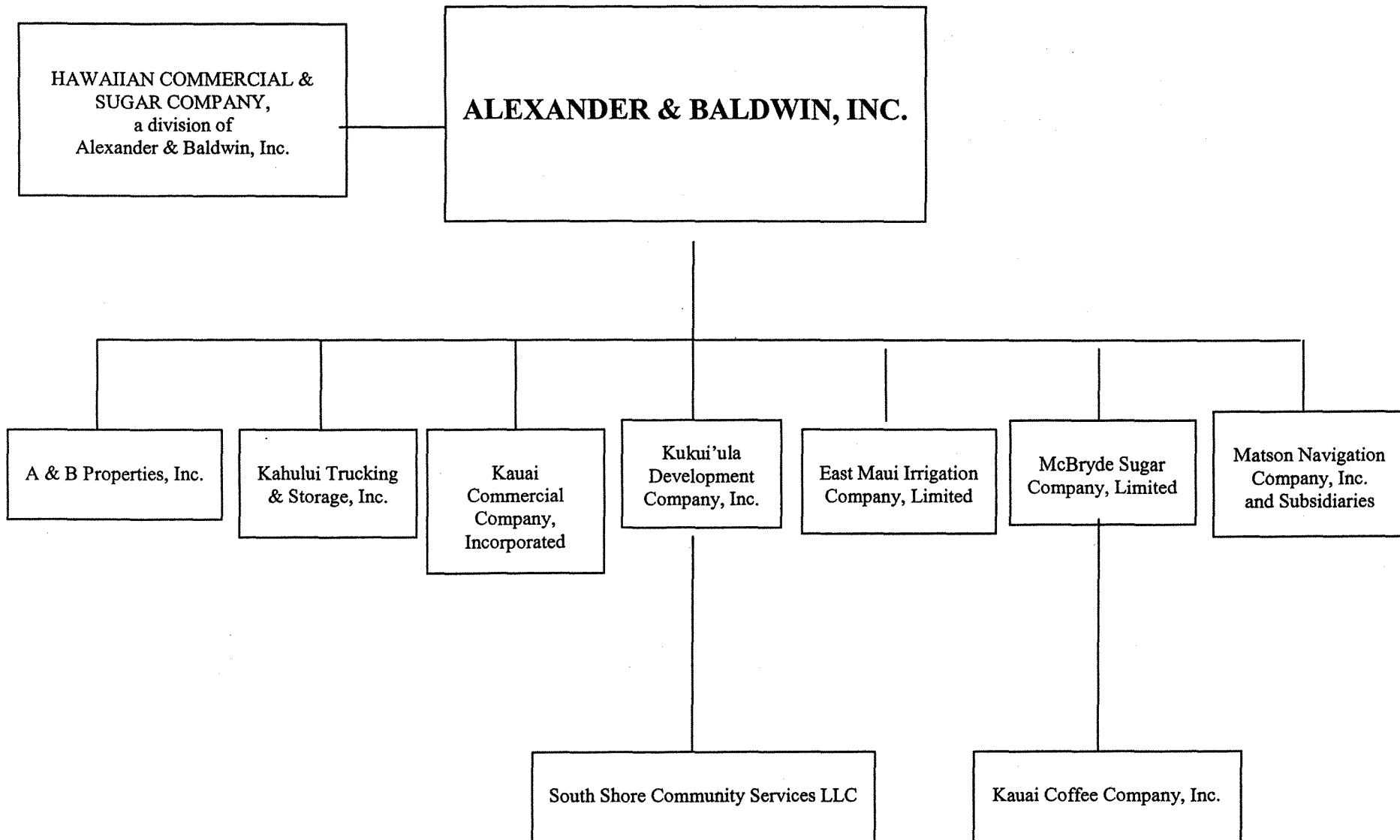
By Wayne H. Kimura
Wayne H. Kimura, Commissioner

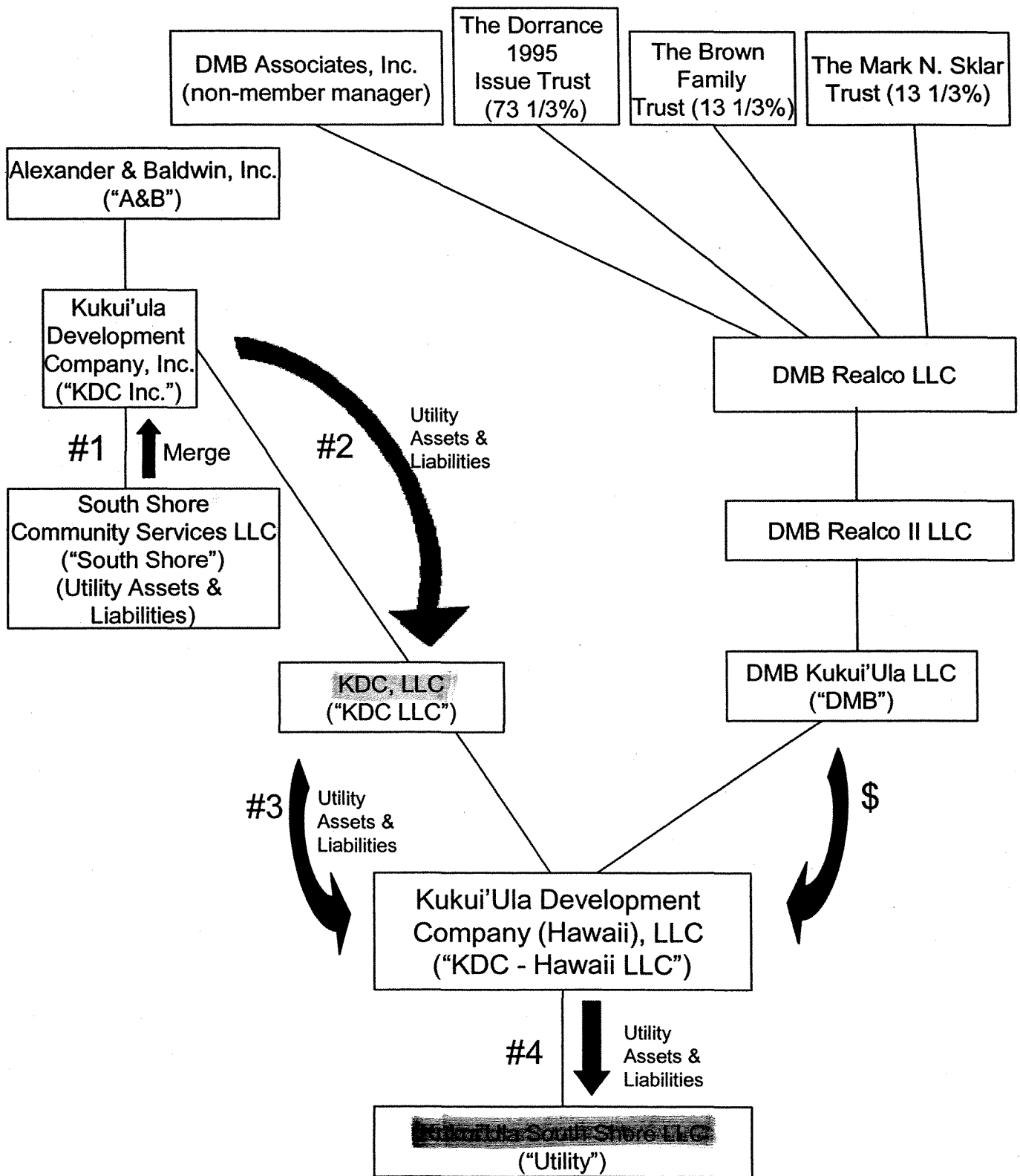
APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

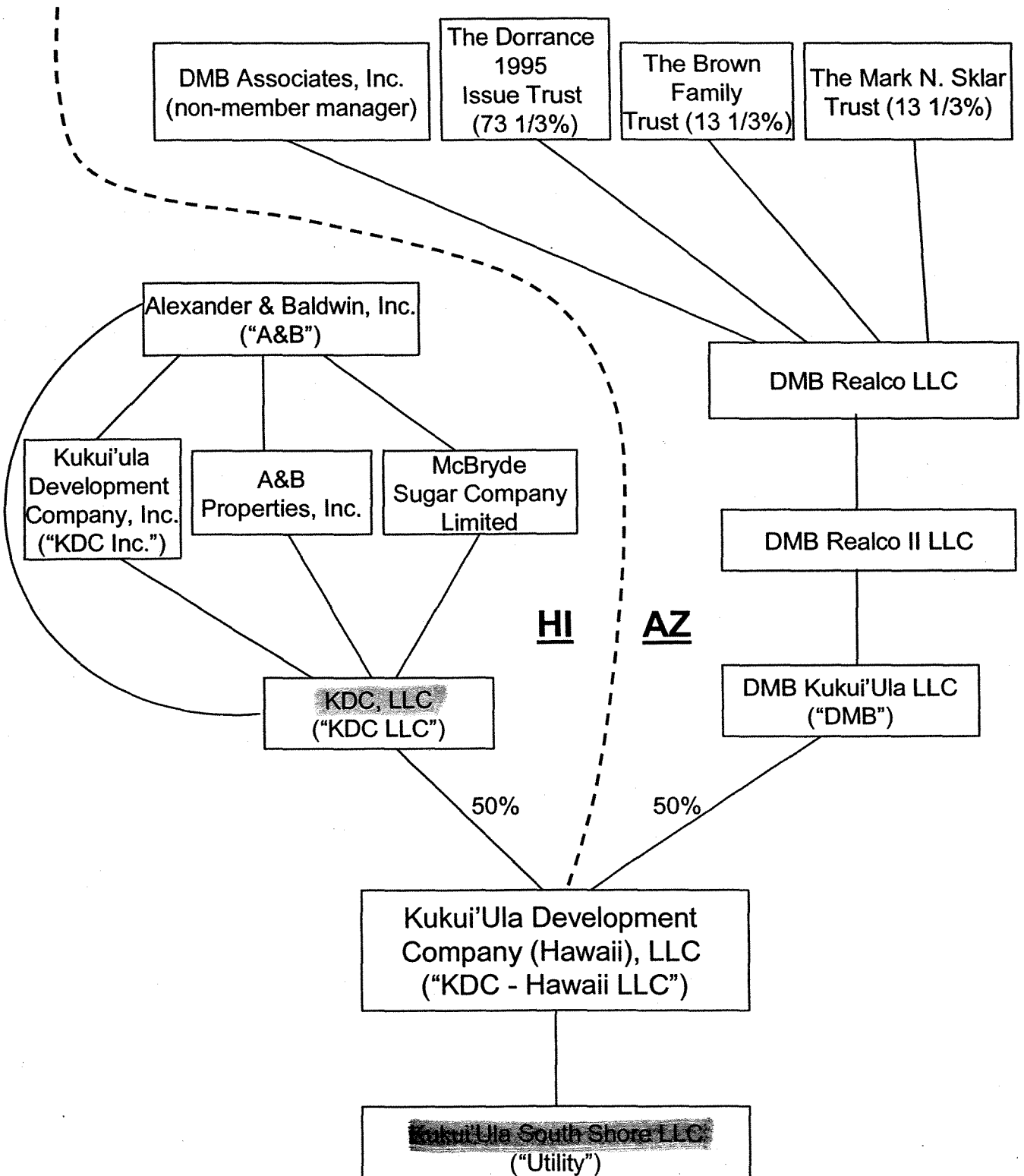
By Janet E. Kawelo
Janet E. Kawelo, Commissioner

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Transfer of Utility Assets & Liabilities



Proposed Ownership Structure

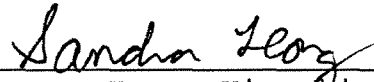
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20676 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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P. O. Box 430
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for Karen Higashi

DATED: November 25, 2003